

**ORAL ARGUMENT SCHEDULED FOR APRIL 13, 2012
BEFORE ROGERS, GRIFFITH AND KAVANAUGH, JJ.**

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

EME Homer City Generation, L.P., *et al.*,

Petitioners,

v.

Environmental Protection Agency, *et al.*,

Respondents.

Case No. 11-1302 (lead)
and consolidated cases

COMPLEX

**RESPONDENT INTERVENORS' SUPPLEMENT TO
THE JOINT PROPOSAL CONCERNING FORMAT
FOR ORAL ARGUMENT**

The parties' Joint Proposal Concerning Format for Oral Argument dated March 2, 2012 (Doc. #1361745) stated that EPA expects to cede ten of its proposed 45 minutes for oral argument to Respondent Intervenor, who would advise the Court in writing of their proposed division of time and the arguing attorneys upon the filing of their final briefs. As described further below, Respondent Intervenor intend to divide their time as follows: four minutes to be used by the State and City Intervenor,¹ three minutes to be used by the Public

¹ The State and City Intervenor are the States of New York, Connecticut, Delaware, Illinois, Maryland, North Carolina, Rhode Island, and Vermont, the Commonwealth of Massachusetts, the District of Columbia, the Cities of
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Health Intervenors,² and three minutes to be used by the Industry Intervenors.³ In the alternative, if the Court is disinclined to allow three attorneys for Respondent Intervenors to present oral argument, Public Health Intervenors would be willing to cede their three minutes to the State and City Intervenors. Respondent Intervenors also set forth below the issues on which each group intends to present oral argument and the names of counsel for Respondent Intervenors who will argue. Respondent Intervenors believe that all other aspects of the Court's February 1, 2012 letter were addressed in the March 2, 2012 joint proposal and need not be addressed further herein.

Time. Assuming the Court adopts the time allotments proposed in the parties' March 2, 2012 Joint Proposal Concerning Format for Oral Argument, Respondent Intervenors propose that the Court allow the State and City Intervenors four minutes, the Public Health Intervenors three minutes, and the Industry

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Bridgeport (CT), Chicago, New York, and Philadelphia, and the Mayor and City Council of Baltimore.

² The Public Health Intervenors are the American Lung Association, Clean Air Council, Environmental Defense Fund, Natural Resources Defense Council, and the Sierra Club.

³ The Industry Intervenors are Calpine Corporation, Exelon Corporation, and Public Service Enterprise Group, Inc.

Intervenors three minutes, in that order. In the alternative, Respondent Intervenors propose that the Court allow the State and City Intervenors seven minutes, and the Industry Intervenors three minutes, in that order.

Issues. Respondent Intervenors will be prepared to answer questions on all issues addressed in their briefs. The State and City Intervenors expect to address the following issues: (1) federal implementation plan issues; (2) “significant contribution” issues; and (3) interference with maintenance issues. The Public Health Intervenors expect to address the following issues: (1) emission budget stringency issues; and (2) Clean Air Act federalism issues. The Industry Intervenors expect to address the following issues: (1) “significant contribution” issues, including those associated with determination of state contributions and emission budgets, including IPM; and (2) compliance deadline issues.

Counsel. Simon Heller, counsel for the State of New York, will argue for State/City Intervenors. Sean H. Donahue, counsel for Environmental Defense Fund, will argue for Public Health Intervenors. Brendan K. Collins, counsel for Exelon Corporation, will argue for Industry Intervenors.

Pursuant to ECF-3(B) of this Court’s Administrative Order Regarding Electronic Case Filing (May 15, 2009), the undersigned counsel for Exelon Corporation hereby represents that the other parties listed in the signature blocks

below have consented to the filing of this supplement to the parties' Joint Proposal Concerning Format for Oral Argument .

CONCLUSION

Respondent Intervenors respectfully request that the Court adopt this supplement to the parties' Joint Proposal Concerning Format for Oral Argument .

March 16, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brendan K. Collins, a member of the Bar of this Court, hereby certify that on March 16, 2012, I electronically filed the foregoing “Respondent Intervenors’ Joint Proposal Concerning Format for Oral Argument” with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate ECF system.

/s/ Brendan K. Collins

Brendan K. Collins